

## **EXPLANATORY MEMORANDUM TO**

### **THE CHARITABLE INCORPORATED ORGANISATIONS (CONSEQUENTIAL AMENDMENTS) ORDER 2017**

**[2017] No. [XXXX]**

#### **1. Introduction**

- 1.1 This explanatory memorandum has been prepared by The Department for Digital, Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### **2. Purpose of the instrument**

- 2.1 This instrument will allow a Community Interest Company (“CIC”) the right to appeal a decision by the Charity Commission to refuse an application for its conversion into a Charitable Incorporated Organisation (“CIO”) and the CIO’s registration as a charity.

#### **3. Matters of special interest to Parliament**

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

##### *Other matters of interest to the House of Commons*

- 3.2 This entire instrument applies only to England and Wales.
- 3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.

#### **4. Legislative Context**

- 4.1 The CIO is a relatively new form of incorporated legal structure, provided for in the Charities Act 2011 that is designed to meet the particular needs of charities and is only available to charities. The corporate structure provided by the CIO meets a demand from the charitable sector for a structure that gives a charity a legal personality of its own, enabling it to conduct business in its own name, rather than in the names of its trustees.
- 4.2 There is currently no conversion process for a CIC to become a CIO and limited provision for charitable companies to do so.
- 4.3 CICs cannot be charities, so the conversion process proposed for CICs is slightly different to the conversion process for existing charitable companies (which are for the most part already registered charities), as it will entail the Charity Commission

assessing whether the proposed CIO that will be formed by the CIC, would be a charity.

- 4.4 This instrument enables CICs to bring an appeal to the First-tier Tribunal against a decision by the Charity Commission to refuse an application for the conversion of a CIC into a CIO and the CIO's registration as a charity. This mirrors existing provision for bringing an appeal by charitable companies seeking to convert to a CIO.
- 4.5 This instrument is one of a group of three instruments concerning CIO conversions.
- 4.6 To aid understanding of the government's intentions with regard to the Charitable Incorporated Organisations (Consequential Amendments) Order 2017, the Minister for Sport and Civil Society has placed in the Libraries of both Houses, draft versions of the Charitable Incorporated Organisations (Conversion) Regulations 2017 and the Index of Company Names (Listed Bodies) Order 2017 and their accompanying Explanatory Memoranda.
- 4.7 These will be laid before Parliament subject to approval of the Charitable Incorporated Organisations (Consequential Amendments) Order 2017.

## **5. Extent and Territorial Application**

- 5.1 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

## **6. European Convention on Human Rights**

- 6.1 The Minister for Sport and Civil Society has made the following statement regarding Human Rights:  
  
"In my view the provisions of the Charitable Incorporated Organisations (Consequential Amendments) Order 2017 is compatible with the Convention rights."

## **7. Policy background**

### ***What is being done and why***

- 7.1 The aim of the three instruments is to allow CICs and charitable companies to convert more easily to CIOs and to make the process as quick and simple as possible.
- 7.2 Several legal structures are currently available to charities. These can be categorised in two groups; (i) unincorporated structures, and (ii) corporate structures.
- 7.3 Around 30,000 charities have chosen to incorporate as a company limited by guarantee. This gives the charity its own legal personality, and the directors (trustees) benefit from limited liability. However, incorporating as a company results in dual registration with and reporting to both Companies House and the Charity Commission. The company structure is also not designed with the needs of charities in mind, and the interaction between company law and charity law can be complex and time consuming for charities opting for this form of incorporation. This results in significant legal and administrative burdens to charities.
- 7.4 The CIO structure is designed to offer a practical alternative for charities seeking the protection and practicality of incorporation without having to meet the dual

registration and reporting requirements of the Charity Commission and Companies House.

- 7.5 Whilst it is currently possible to register a new charity as a CIO, existing charities do not have the option of converting to this legal form. Instead, if they wish to become CIOs, existing charities have to close, and re-register with the Charity Commission. This is a lengthy, costly and burdensome process, which has prevented many existing charities from taking advantages associated with the CIO legal form. It is our view that permissive regulation will provide the legal certainty that is required for a direct conversion process.
- 7.6 Since the introduction of the CIO legal structure in 2012 it has proven to be a very popular choice of structure, with approximately 12,500 charities registering as CIOs. The majority of these are newly registering charities. Of the new charity registrations accepted by the Charity Commission in the last financial year, over 50% were registered as CIOs.
- 7.7 It is expected that the option of conversion will be similarly popular, in particular, for small charities that have opted for the company structure and for CICs.
- 7.8 The Charity Commission estimates that between 20% (7,200) and 35% (12,600) of existing incorporated charities could decide to convert under the proposed CIO conversion legislation over ten years.
- 7.9 The Charity Commission estimates that take-up of the CIO form is likely to be lower with CICs: between 1% (120) and 5% (600) of current CICs could look to convert to a CIO structure.
- 7.10 The feedback to our consultation showed high levels of support for introducing a CIO conversion process, with 95% of respondents supporting the introduction of new regulations. The majority of consultation respondents (80%) also believed that there is a demand for the introduction of these regulations.
- 7.11 It is appropriate that as we are providing CICs with an equal right to apply to convert to a CIO structure, that we ensure they have the same power to appeal to the First-tier Tribunal, a decision by the Charity Commission to refuse an application for the conversion of a Community Interest Company into a CIO and the CIO's registration as a charity. This instrument will ensure parity between the right of appeal of CICs and charitable companies seeking a conversion to a CIO.

#### ***Consolidation***

- 7.12 Not applicable.

### **8. Consultation outcome**

- 8.1 A public consultation on the draft CIO conversion regulations took place from 1 April 2016 to 10 June 2016. A draft version of the Charitable Incorporated Organisations (Consequential Amendments) Order was made available for review. The consultation asked for responses from all parts of the charitable sector and from the public. There were 40 responses to the consultation. Consultation responses were received from a range of respondents including small and medium charities, legal practices

representing charities, local government, voluntary sector infrastructure organisations, trusts and community associations.

- 8.2 A more detailed analysis of the consultation outcome is available at:  
<https://www.gov.uk/government/consultations/converting-to-a-charitable-incorporated-organisation>
- 8.3 There was a very positive response to the proposals for a simplified CIO process, with 95% of respondents supporting the introduction of the regulations. There was also support for our assumptions on the take up of the conversion process, with 80% of respondents agreeing that there would be a demand for the regulations.
- 8.4 Responses from the majority of stakeholders were positive. Most were supportive of the policy intent and some offered proposals for refining the requirements of the regulations.
- 8.5 Respondents agreed that changes to the regulations would reduce burden on charities, in particular smaller charities. Respondents also confirmed that converting to a CIO would result in simpler reporting requirements, a single annual return and lower costs for registration and filing of information.
- 8.6 We are making some minor amendments to the draft regulations as a result of the comments raised through this consultation. This includes removing the requirement for charitable companies to have filed their most recent accounts or reports with Companies House before an application is granted. We will retain the requirement to refuse an application if a charity is in default of any requirement to send documents or information to the registrar or Charity Commission.

## **9. Guidance**

- 9.1 Guidance will be produced to support CICs with the appeal process. As the sector's regulator, the Charity Commission will produce this guidance in advance of the regulations coming into force.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 No Impact Assessment has been prepared, as this draft order does not impose any costs or burdens on charities or businesses. It is a permissive regulatory framework and will be optional for charities and CICs. Only charities that choose to convert to the CIO form will be affected by this legislation. Organisations who decide to convert (at a small cost) will benefit from annual administrative savings.
- 10.4 An Impact Assessment has been prepared and accompanies the draft version of the Charitable Incorporated Organisations (Conversion) Regulations 2017 and a copy deposited in the House Library.

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

12.1 This instrument will be reviewed following a period of five years.

## **13. Contact**

13.1 Laura Kennedy at the Department for Digital, Culture, Media and Sport. Telephone: 0207 276 0729 or email: [laura.kennedy@culture.gov.uk](mailto:laura.kennedy@culture.gov.uk) can answer any queries regarding the instrument.